IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 834 OF 2000

The Commissioner of Income Tax,
Bombay City-X, Bombay,
Bandra Kurla Complex,
Bandra (East), Bombay-52. .. Appellant

V/s.

Smt. Maniben Valji Shah,
302, Makwana Apartment, 3rd Floor,
Saint Muktabai Road,
Vile Parle (East),
Bombay - 57. .. Respondent

Mr. R.V. Desai, Sr. Advocate with Mr. A.S. Rao for the Appellant

Mr. K.B. Bhujale for the Respondent

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.
DATED : 14.02.2005

JUDGMENT (PER - S. RADHAKRISHNAN, J.):-

1. This Appeal is sought out of an order passed by the Income Tax Appellate Tribunal holding that the re-opening under Section 147 of the Income Tax Act was not valid and thereby had directed deletion of the additions made to the assessment with regard to the Respondent assessee.

2. The above matter raises the following substantial question of law for decision of this Court at the instance of the Revenue:-

> "Whether on the facts and circumstances of the case, the ITAT, Bombay, is right in law in holding that the action of the Assessing Officer in re-opening the assessment u/s 147 of the I.T. Act, 1961 is invalid

and also in deletion of additions made on account of unproved loans and cash credits?"

3. The relevant assessment year in the above is 1988-1989. It appears that the assessee had filed a return on 25.3.1991 and no regular assessment order was passed, however on 10.10.1991, a notice was sent to the Respondent assessee under section 143(1) for re-opening of the assessment under section 148 of the Income Tax Act. The relevant portion of the said notice dated 10.10.1991 reads as under:-

> "The above assessee has filed Return of income for the above asst. year on 25.3.1991 declaring total income of Rs. 19,010/-. It is seen from the Capital A/c. that the assessee had purchased flat for Rs. 2,50,000/- for which no details filed alongwith the return of income such as copy of purchase agreement, source of fund etc. In absence of these details and taking into consideration of the Balance sheet filed, I propose to reopen the assessment u/s. 147 of the I.T. Act, to scrutinise the investment made in the flat purchased.
>
> Issue notice u/s. 148 of the I.T. Act, accordingly.
>
> Sd/- 10-10-91
> Income-tax Officer,
> Ward 22(8), Mumbai."

4. In pursuance, thereof, the Respondent assessee had appeared before the assessing officer and produced various records to indicate various loans taken from various persons, however, the assessing officer did not accept the explanation with regard to the aforesaid loans and assessed the net taxable income @ Rs. 2,90,000/-. Aggrieved thereby, the Respondent assessee has preferred an Appeal before the Commissioner of Income Tax

(Appeals), who by his order dated 13.12.1994 came to the conclusion that the income ought to be assessed @ Rs.2,25,000/-. The Assessee thereafter appeared before the Income Tax Appellate Tribunal, mainly contending that the officer had completed the assessment under section 143(1) of the Income Tax Act, though he ought to have verified the details regarding the Return, issued under section 143 (2) of the Income Tax Act and ought not to have resorted to Section 148 for re-opening of the assessment. The main submission of the Respondent assessee was that the notice issued by the assessing officer dated 10.10.1991, as quoted hereinabove, only seeks to find out the source of the funds and the same does not constitute "any reason for the belief that the income had escaped the assessment", so as to invoke section 148 of the Income Tax act.

5. The Tribunal by it’s judgment and order dated 15.10.1999 had categorically come to a conclusion that if the assessing officer wanted to verify the correctness of the Return and the details and particulars therein, he ought to have issued notice under section 143(2) within a period of six months from the end of the month, in which the Return was furnished, whereas the said notice under section 143(2) could not have been issued on 10.10.1991 and merely because the same could not have been issued under section 143(2) of the Income Tax Act, the assessing officer could not have resorted to the provisions of section 148 for re-opening of the assessment. The

Tribunal has also clearly held that it's an admitted position that the flat was purchased by the Respondent assessee for Rs. 2,50,000, which was reflected in the books of accounts and what was sought to be verified was only investment made with regard to purchase of the aforesaid flat.

6. Shri. Bhujale, the learned counsel appearing for the Respondent brought to our notice a judgment of the Supreme Court in **Ganga Saran & Sons P. Ltd. vs. Income-Tax Officer and others 130 ITR 1 (S.C.)**, wherein the Supreme Court has interpreted the scope of section 147 of the Income Tax Act for the purpose of re-opening. In this behalf, the following observation of the Supreme Court in the above judgment will be relevant :-

> " It is well settled as a result of several decisions of this court that two distinct conditions must be satisfied before the ITO can assume jurisdiction to issue notice under s. 147(a). First, he must have reason to believe that the income of the assessee has escaped assessment and, secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the ITO would be without jurisdiction. The important words under s. 147(a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the ITO must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the ITO in coming to the belief, but the court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under s. 147(a). If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and

> law could reasonably entertain the belief, the conclusion would be inescapable that the ITO could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid."

7. Shri Bhujale, the learned counsel for the Respondents also referred to judgment of our High Court in **Dr. Amin's Pathology Laboratory v. P.N. Prasad and others 252 ITR 683,** wherein also this Court has clearly held that the assessment could not have been re-opened when there is no allegation of suppression of material facts, leading to the conclusion of escaping of income for the purpose of the assessment.

8. Having heard Shri Desai, the learned senior counsel for the Appellant, as well as Shri Bhujale, the learned counsel for the Respondents, it is an admitted position that the assessee had invested a sum of Rs. 2,50,000/- for the purpose of purchasing the flat and what was sought to be investigated was the source of income. A bare perusal of the aforesaid notice dated 10.10.1991, clearly indicates that the Officer was wanting to know the details with regard to the source of funds with regard to purchase of the said flat for a sum of Rs. 2,50,000/-. Obviously in the above, there is no question of the assessing officer having any basis to reasonably entertain the belief that any part of the income of the assessee had escaped the assessment and that such escapement was by reason of omission or failure on the

part of the assessee to disclose fully and truly all material facts.

9. Under the aforesaid facts and circumstances, we find no merit in the above Appeal, hence the same stands dismissed, however, no order as to costs.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)